Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
EXECUTION APPLICATION NO. 432 OF 2006
IN
SUMMARY SUIT NO. 1954 OF 2003
WITH
CHAMBER SUMMONS NO. 1428 OF 2015

Government of Republic of Mauritius …Plaintiff
Versus
Nitin Mahalal Parekh & Anr …Defendants

Mr A Daver, *i/b Singhania Legal Service, for the Plaintiff.*
Mr Asad T Bukhari, *for the Applicant in CHS/1428/15.*
Mr SG Chitgopekar, *Deputy Sheriff, is present.*

CORAM: G.S. PATEL, J
DATED: 20th March 2017

PC:-

1. I am unable to understand how the Applicant has failed to serve this Chamber Summons dated 10th September 2015 on the Decree Holder fore nearly two years. The Applicant is an outsider to the decree and claims to be the owner of the property sought to be attached in execution. The voluminous Affidavit in Support, of the same date, runs into 200 pages.

2. The Applicant's offer to serve the Chamber Summons today is too little too late. There is no reason at all why the Decree Holder should after two years of complete inaction and passivity on the part of the Plaintiff now have to confront this. There is absolutely no explanation for this delay and in fairness, Mr Bukhari who appears for the Applicant today, apart from saying that he has recently been engaged, does not attempt an explanation.

3. Mr Daver points out that this very Applicant filed Suit No. 288 of 2002 in regard to the same flat. That was dismissed for default on 20th June 2014. He then filed a Notice of Motion No. 89 of 2015 for restoration. It seems this was allowed on 18th February 2016, very recently. No application seems to have been made in that suit (where the present Plaintiff is not a party) for any protective order or to establish that the present Applicant, Chandrakant Vadilal has title to the flat.

4. None of this is an explanation for failing to serve the Chamber Summons. Whether or not this is deliberate or unintentional is a matter on which I choose not to comment. In my view, the result must be the same. Perhaps the only difference is this: where the Court finds the delay is intentional, it will impose costs while dismissing the application. Not arriving at that conclusion of an intentional delay, I dismiss this Chamber Summons but without costs.

5. At this stage, Mr Bukhari says the Applicant is prepared to clear the entire debt. In fairness to Mr Bukhari, I will stand the

Execution Application over to Friday, 24th March 2017. If his client wishes to clear the debt, he should have in Court an instrument in the amount that Mr Bukhari has communicated to Mr Daver in Court today. Mr Daver's application is for fixing the reserve price on the basis of a valuation report from M/s Nadkarni & Associates is held in abeyance for the present.

6. The Registry will check if the present Suit and Applications require to be registered in the Commercial Division of this Court. If so, the Registry will take the necessary steps in that regard acting on an authenticated copy of this order.

(G. S. PATEL, J.)